

**AUG 03 2006**

**NOT FOR PUBLICATION**

**UNITED STATES COURT OF APPEALS**

**CATHY A. CATTERSON, CLERK  
U.S. COURT OF APPEALS**

**FOR THE NINTH CIRCUIT**

MARIA ELENA REYES-GARCIA,

Petitioner,

v.

ALBERTO R. GONZALES, Attorney  
General,

Respondent.

No. 05-70703

Agency No. A79-651-074

MEMORANDUM<sup>\*</sup>

On Petition for Review of an Order of the  
Board of Immigration Appeals

Submitted July 24, 2006 <sup>\*\*</sup>

Before: ALARCÓN, HAWKINS, and THOMAS, Circuit Judges.

Maria Elena Reyes-Garcia, a native and citizen of Mexico, petitions for review of the Board of Immigration Appeals' ("BIA") order denying her motion to reconsider and reopen removal proceedings. We have jurisdiction under 8 U.S.C.

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<sup>\*</sup> This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

<sup>\*\*</sup> The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

§ 1252. We review for abuse of discretion the denial of a motion to reopen and reconsider, *Iturribarria v. INS*, 321 F.3d 889, 894 (9th Cir. 2003), and we deny the petition for review.

To the extent Reyes-Garcia attempted to present new information in her motion to reconsider, the BIA did not abuse its discretion in construing that part of her motion as a motion to reopen, and denying it on the grounds that Reyes Garcia failed to present evidence to support any of her contentions. *See* 8 C.F.R.

§ 1003.2(c)(1) (providing that a motion to reopen “shall be supported by affidavits or other evidentiary material”).

Reyes-Garcia’s contention that the BIA violated her due process rights by disregarding her evidence of hardship is not supported by the record and does not amount to a colorable constitutional claim. *See Martinez-Rosas v. Gonzales*, 424 F.3d 926, 930 (9th Cir. 2005).

In her opening brief, Reyes-Garcia fails to address, and therefore has waived any challenge to, the BIA’s denial of reconsideration. *See Martinez-Serrano v. INS*, 94 F.3d 1256, 1259-60 (9th Cir. 1996) (issues which are not specifically raised and argued in a party’s opening brief are waived).

**PETITION FOR REVIEW DENIED.**